

BUREAU OF SECURITY AND INVESTIGATIVE SERVICES

INITIAL STATEMENT OF REASONS

Hearing Date: July 21, 2011, 9:30 a.m. to 12:00 p.m. Written comments will be accepted by mail, facsimile, and e-mail until 5:00 p.m. July 21, 2011.

Subject Matter of Proposed Regulations: Unlicensed Persons.

Sections Affected: Title 16, California Code of Regulations Sections 600.1, 601.6, 601.7, 601.8, 601.9 and 601.10.

Purpose of Regulatory Changes

The purpose for the adoption and amendments of these regulations is to provide the Bureau with the ability to issue citations for unlicensed activity and establish fine amounts for such citations. These regulations would permit the Bureau of Security and Investigative Services (BSIS) the ability to issue citations/fines to persons advertising in any written, printed or verbal communication for the purpose of soliciting business without a license.

Current State

Unlicensed locksmiths, private investigators, and security companies are a source of consumer fraud, a threat to public safety, and unfair competition for legitimate California businesses. As a result of the growing number of complaints about these activities and the harm they have done, the BSIS has implemented several new enforcement programs. These include the establishment of an enforcement unit focused on unlicensed complaints, working with local law enforcement on sweeps and stings, and reviewing online advertising on sites such as Craigslist.

The result of this increased focus has been a 44% increase over the last two fiscal years in the number of unlicensed complaints the Bureau has investigated. While this growth is evidence of the progress BSIS is making in addressing this problem, there are still obstacles. The biggest impediment is the limited deterrence tools the Bureau can leverage. Currently the BSIS can send an education letter to the unlicensed individual or company or forward the complaint to the local District Attorney who can elect to pursue prosecution at its discretion.

Proposed State

These proposed regulations would provide the Bureau of Security and Investigative Services with the ability to activate cite and fine program as a mechanism to obtain compliance for unlicensed activity and to deter others from beginning such activity. This would help enforce current law, provide consumer protection, and help provide a fair competitive environment for licensed California businesses.

Proposed Statutory Changes and Rationale for Each

1. Amend Section 600.1 to clearly define the word “Unlicensed” in section 600.1(f) and “Advertisement” in Section 600.1(g).

Factual Basis/Rationale: The proposed amendments will further define and make clear each Chapter referenced in this regulation section and, for clarity reasons, remove Chapter 8 (Collection Agencies), which is no longer under the jurisdiction of the Bureau.

2. Adopt Sections 601.6, 601.7, 601.8, 601.9, and 601.10. The adoption of these regulations will make specific the following:
 - Section 601.6 of Title 16 of the California Code of Regulations would establish the authority for the Bureau to issue administrative citations for unlicensed activity and fine amounts of such citations. This section would also establish the authority to issue citations and fines to those persons who advertise in any written, printed, or verbal method for the purpose of soliciting business without a license.

Factual Basis/Rationale: It is necessary to establish the Bureau’s authority in order to issue administrative citations for unlicensed activity and fine amounts of such citations. It would create a more effective deterrent to the unlicensed practitioners.

- Section 601.7 of Title 16 of the California Code of Regulations would specify the factors the Chief of the Bureau shall consider in assessing the amount of an administrative fine.

Factual Basis/Rationale: This regulation is necessary to allow the Bureau to consider the good and bad faith exhibited by a cited person, as well as their willingness to follow/comply with the law. This regulation would provide the Bureau with a list of factors to consider when determining the amount of the fine. This would provide increased consumer protection and create an effective deterrent for unlicensed activity.

- Section 601.8 of Title 16 of the California Code of Regulations would specify the format of a citation and the process for issuing a citation.

Factual Basis/Rationale: This regulation is necessary to provide the Bureau with uniformity of language when issuing citations and the flexibility to issue fines proportionate to the nature of the violation. This would ensure that all unlicensed persons are held to similar standards and requirements as current licensees.

- Section 601.9 of Title 16 of the California Code of Regulations would establish the timeframes for complying with an order of abatement and specifies the consequences of failing to honor those timeframes.

Factual Basis/Rationale: This regulation is necessary to provide the Bureau flexibility to allow a cited person an opportunity to comply with the law. This would ensure that all unlicensed persons are held to similar standards and requirements as current licensees.

- Section 601.10 of Title 16 of the California Code of Regulations establishes the process for contesting a citation and establishes that a person issued a citation can request an informal review with the Bureau Chief. If the decision is upheld, the individual can then request a hearing through the Office of Administrative Hearings.

Factual Basis/Rationale: This regulation is necessary to establish procedures for the cited person giving them the ability to appeal and receive due process of the law.

Underlying Data:

Data on unlicensed activity is not exact due to the underground nature of the activity. The Bureau has spent the last two fiscal years focused on utilizing proactive measures to address the issue. This has resulted in the following associated data points:

- 44% increase over the last two fiscal years in the number of unlicensed complaints the Bureau has investigated.
- During the last 13 months (going back to March 2010), the Bureau has actively screened all new Craigslist ads offering investigative services. This has resulted in the identification of 117 ads from suspected and verified unlicensed individuals.

Business Impact:

This regulation will cause unlicensed businesses or individuals to either become licensed or cease operations.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

The alternative would be to not adopt new regulation and continue without the ability to issue an administrative citation/fine for unlicensed persons. This would hinder the Bureau's ability to provide an enforcement and deterrence tool to use against unlicensed activity. Unabated, these activities are a source for fraud, a danger to consumers, a disadvantage for legitimate California businesses, and part of the underground economy.

The Bureau's top priority is to protect the consumer and create a more effective deterrent to unlicensed practitioners. This proposal will ensure that all unlicensed persons are held to similar standards and requirements as current licensees.